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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,359	12/04/2003	Steven S. Bordewick	AP.002US1	8234
46350	7590	01/12/2005		
KATHLEEN R. TERRY 2417 COMO AVENUE ST. PAUL, MN 55108			EXAMINER PATEL, MITAL B	
			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/729,359

Applicant(s)

BORDEWICK, STEVEN S.

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/4/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. There is a lack of antecedent basis for the following limitations:

- Claim 2, line 1, "the interior surfaces"

Correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. As to claim 9, Applicant sets forth blower assembly wherein the outlet muffler box comprises the inlet muffler box of claim 6. It is unclear to the Examiner how the outlet muffler box comprises the inlet muffler box since it is shown in the drawings and disclosed in the spec that the outlet muffler box is separate from the inlet muffler box. It appears that Applicant is attempting to claim an outlet muffler box to have the baffle system taught for the inlet muffler box. If such is the case, then the claim must clearly set forth those limitations for the outlet muffler box.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Francis (US 4,905,789).

7. **As to claim 1**, Francis teaches a blower assembly **19** for providing continuous positive airway pressure to a patient (**See Cols.1 and 2**) comprising an inlet muffler box **10** which receives a turbulent stream of air which is directed along an air pathway and is transformed into an approximately laminar stream of air; a blower box **18** comprising a centrifugal fan **22** (**See Col. 4, lines 1-2**); and an outlet muffler box **12** connected to a hose (**See Col. 5, lines 38-40**) leading to a patient.

8. **As to claim 2**, Francis teaches a blower assembly wherein the interior surfaces are coated with an anechoic material (**See Col. 4, lines 13-27 in which case the anechoic material is the sound-absorbing material**).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Francis (US 4,905,789) in view of Watanabe et al (US 5,783,780).

12. **As to claims 3-5**, Francis teaches essentially all of the limitations except for wherein the air pathway is reduced in cross sectional area from that of the hose leading to the patient and the specifics regarding the cross sectional area as set forth in claims 4 and 5. However, Watanabe et al teaches a sound absorption structure further disclosing that the cross sectional area of the various parts of the sound absorption structure is dependent on the space for installing the sound absorption structure. Therefore, it would have been obvious to one of ordinary skill in the art to modify the cross-sectional area of the various parts depending on the spacing of the various elements.

13. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Francis (US 4,905,789) in view of Steele (US 5,274,201).

14. **As to claims 6-9**, Francis teaches essentially all of the limitations including a blower assembly **19** for providing continuous positive airway pressure to a patient (**See Cols.1 and 2**) comprising an inlet muffler box **10** which receives a turbulent stream of

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air; a blower box **18** comprising a centrifugal fan **22** (**See Col. 4, lines 1-2**); and an outlet muffler box **12** connected to a hose (**See Col. 5, lines 38-40**) leading to a patient. Francis does not specifically teach a second perforated tube and first, second, and third dividers as set forth in claims 6-9. However, Steele does teach a noise muffler for an air blower having multiple perforated tubes **19** along with various dividing arrangements (**See Figs.2 and 4, see also Col. 1, lines 25-27**) to attenuate, abate, reduce the noise/decibel level of the onrushing air. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the inlet muffler box and outlet muffler box of Francis to include the perforated/divider arrangement of Steele and that taught by the prior art to attenuate, abate, reduce the noise/decibel level of the onrushing air.

### ***Conclusion***

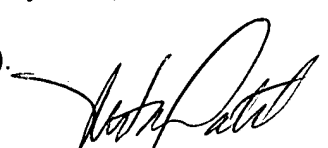
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 6651658, US 6644311, US 6629525, US 6619286, US 6216691, US 6085746, US 6024189, US 5824972, US 5720280, US 4899740, US 4109754, US 3642095.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mital B. Patel  
Examiner  
Art Unit 3743

1/8/05